

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8993 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL MAHESHKUMAR CHIMANLAL

Versus

GUJARAT UNIVERSITY

Appearance:

MR BN RAVAL for Petitioner

MR NV ANJARIA for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 13/08/96

ORAL JUDGEMENT

1. By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner seeks to challenge the Notification dated 14.10.1995, whereby the petitioner has been held guilty of using unfair means and has been punished cancelling the examination of Gujarati Paper-9 and he has also been debarred from appearing from one examination.

2. The petitioner's case is that he appeared at the Third Year B.A. Examination with his Seat No.11224 conducted by the Gujarat University during the period 04.05.1995 to 12.05.1995. He received a notice on July 15, 1995 stating inter alia that, on 05.05.1995, the petitioner was found copying from the other student being Seat Number was 11223 in the examination hall at Dehgam center. The petitioner filed a reply to the same denying the allegations. The petitioner also filed a certificate of the Block Supervisor, certifying that the petitioner was not found copying in the examination hall on 05.05.1995. The petitioner also gave legal notice to the respondent university demanding the declaration of the result. It was also stated that a false case has been registered against him. Thereafter, the petitioner received a notice dated 11.09.1995 asking him to appear before the Unfair Means Committee on 06.10.1995. The petitioner filed this Special Civil Application on 17.10.1995 seeking directions against the respondent university to declare his result. This Court issued a showcause notice on 18.10.1995 returnable on 07.11.1995.

3. Mr M.P.Jadia, Officiating Registrar, has filed an affidavit stating that the examiner of the Gujarati Paper-9, during the course of assessment of the various answer books, found candidates having Seat No.11223 and 11224 to have copied from each other in respect of the answer to question No.2. In view of this information, a notice dated July 15, 1995 was served on the petitioner. It is admitted that there is some discrepancies in the said notice. It is further stated that the petitioner appeared before the Unfair Means Committee and certain questions were put to him. He was also informed about the report of the examiner and was also shown his answer book and the answer book of the candidate having Seat No. 11223. After considering the entire matter, the Committee recommended that the result of the petitioner in Gujarati Paper-9 be cancelled and he should be debarred from appearing in one examination. This recommendation was unanimously accepted by the Executive Council.

4. It is contended by Mr Raval that the entire inquiry is vitiated as the notice is vague. It is pointed out that, in the notice, the case of the University is that the petitioner was found copying on 05.05.1995 from answer book of the candidate having Seat No.11223 or permitting him to copy from his answer book. On the contrary, the Committee has found that it was reported by the examiner that he found during the assessment of the answer books that the candidates having

Seat No.11223 and 11224 being copied from each other. Mr Raval further submits that though the examination of Gujarati Paper-9 was held on April 10, 1995, the date given in the notice is 05.05.1995. Mr Anjaria, learned counsel appearing for the University submits that, in the notice, the date mentioned 05.05.1995 is in fact the date of the communication of the examiner, however, this error does not affect the enquiry as no prejudice has been caused to him, as he was appraised of the real charge by the Committee. I have perused the proceeding. The Committee asked the petitioner to explain the allegation of copying as reported by the examiner. Petitioner was also shown the report of the examiner, as also both the answer-books, to which petitioner had no satisfactory answer. In view of this, I find no substance in the contention raised by the petitioner. The another contention of the petitioner is that he was not supplied with the examiner's report and he was also not shown the answer books and as such, he has been denied of reasonable opportunity to defend. The contention is factually incorrect, as it is evident from the affidavit filed on behalf of the University that the petitioner was appraised with the report of the examiner and the answer books were also shown to him.

5. It is next contended that the finding of the Inquiry Committee is entirely based on surmises and conjectures inasmuch as no inquiry has been conducted as to whether it was possible to copy or to permit to copy after the answer books were submitted to the Supervisor. I have seen the answer books which have been produced by Mr Anjaria, learned counsel for the University. The way in which the questions have been attempted, I am satisfied that the petitioner has either permitted the candidate having Seat No.11223 to copy from his answer book or he has copied from him. Thus, the finding of the Committee calls for no interference.

6. I may mention at this stage that an affidavit filed by one Mr Ketankumar Babubhai Patel, who has stated that he appeared at the F.Y.B.A. examination in the year 1995 with his Seat No.11223 and has given his version as to how he could copy from the candidate having Seat No.11224, completely exonerating the petitioner. On face of the affidavit filed by Mr Ketan Patel, appears to be absolutely false. He has somehow tried to help the petitioner.

7. In view of the aforesaid, there is no merits in this Special Civil Application and the same is accordingly rejected. Rule discharged.

8. Having perused the affidavit filed by Mr Ketankumar Babubhai Patel, I am satisfied that, prima facie he has given a false statement on oath and such guilty of perjury. He has also been impleaded as the respondent No.2 at the instance of the petitioner. Considering the facts of the case, it is expedient in the interest of justice that a complaint is filed against Mr Ketan Babubhai Patel in the Court of competent jurisdiction. Issue notice to Mr Ketan Babubhai Patel as to why the complaint be not filed in the Court of competent Magistrate for his prosecution on the charge of perjury. The notice be made returnable to Mr Ketan Babubhai Patel on September 09, 1996. Let separate proceeding be registered against Ketan Babubhai Patel.

*** **

parmar*